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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2012-300

OAH No. L-2011121001

**KERRY ADINE HICKS, AKA KERRY
TORMEY, AKA KERRY ADINE MARY
TORMEY**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

**6402 Hummingbird St. #104
Ventura, CA 93003
Registered Nurse License No. 512633**

Respondent.

FINDINGS OF FACT

1. On or about November 9, 2011, Complainant Louise R. Bailey, M.Ed., RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2012-300 against Kerry Adine Hicks, aka Kerry Tormey, aka Kerry Adine Mary Tormey (Respondent) before the Board of Registered Nursing.

2. On or about July 11, 1995, the Board of Registered Nursing (Board) issued Registered Nurse License No. 512633 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2012-300 and will expire on January 31, 2013, unless renewed.

1 3. On or about November 9, 2011, Respondent was served by Certified Mail with copies
2 of the Accusation No. 2012-300, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to California Code of Regulations, title 16,
5 section 1409.1, is required to be reported and maintained with the Board. Respondent's address
6 of record was and is: 4362 Dean Drive, Ventura, CA 93003.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. On or about November 13, 2011, Respondent signed and returned a Notice of
11 Defense, requesting a hearing in this matter. On the Notice of Defense, Respondent indicated that
12 her address was 6402 Hummingbird St., # 104, Ventura, CA 93003. Respondent also indicated
13 that she was represented by attorney Michael Ford (Ford), whose address is 448 Sepse Ave.,
14 Fillmore, CA 93015. A Notice of Hearing was served by mail at Respondent's address as
15 indicated in the Notice of Defense as well as 1746 F. South Victoria Ave, Ventura, CA 93003.
16 The Notice of Hearing was also sent to Ford at the address set forth in the Notice of Defense. The
17 Notice of Hearing informed Respondent and Ford that an administrative hearing in this matter
18 was scheduled for June 11, 2012. Both Respondent and Ford failed to appear at that hearing.

19 6. Government Code section 11506 states, in pertinent part:

20 (c) The respondent shall be entitled to a hearing on the merits if the respondent
21 files a notice of defense, and the notice shall be deemed a specific denial of all parts
22 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

23 7. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

27 8. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on
3 file at the Board's offices regarding the allegations contained in Accusation No. 2012-300, finds
4 that the charges and allegations in Accusation No. 2012-300, are separately and severally, found
5 to be true and correct by clear and convincing evidence.

6 9. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
8 and Enforcement is \$12,052.00 as of June 8, 2012.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent Kerry Adine Hicks, aka Kerry
11 Tormey, aka Kerry Adine Mary Tormey has subjected her Registered Nurse License No. 512633
12 to discipline.

13 2. The agency has jurisdiction to adjudicate this case by default.

14 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
15 Nurse License based upon the following violations alleged in the Accusation which are supported
16 by the evidence contained in the Default Decision Evidence Packet in this case:

17 a. Business and Professions Code section 490 and 2761, subdivision (f) and California
18 Code of Regulations section 1444 in that Respondent was convicted of crimes that are
19 substantially related to the functions, duties, and qualifications of a registered nurse.

20 b. Business and Professions Code section 2762, subdivision (a) for unprofessional
21 conduct because Respondent was ordered to undergo mandatory drug and alcohol treatment as a
22 condition of criminal probation.

23 c. Business and Professions Code section 2762, subdivision (b) for unprofessional
24 conduct because Respondent was found in possession Xanax when she was arrested on or about
25 August 2, 2010.

26 d. Business and Professions Code section 2761, subdivision (d) for violation of the
27 provisions of the Nurse Practice Act.
28

1 ORDER

2 IT IS SO ORDERED that Registered Nurse License No. 512633, heretofore issued to
3 Respondent Kerry Adine Hicks, aka Kerry Tormey, aka Kerry Adine Mary Tormey, is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
5 written motion requesting that the Decision be vacated and stating the grounds relied on within
6 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
7 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

8 This Decision shall become effective on DECEMBER 20, 2012.

9 It is so ORDERED NOVEMBER 20, 2012

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11
12 FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

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14 default decision_LIC.rtf
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Exhibit A

Accusation Case No. 2012-300

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MICHELLE McCARRON
Deputy Attorney General
4 State Bar No. 237031
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2544
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2012-300

12 **KERRY ADINE HICKS,**
13 **AKA KERRY TORMEY,**
AKA KERRY ADINE MARY TORMEY
14 **4362 Dean Drive**
Ventura, CA 93003
15 **Registered Nurse License No. 512633**

A C C U S A T I O N

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about July 11, 1995, the Board of Registered Nursing issued Registered Nurse
24 License Number 512633 to Kerry Adine Hicks, aka Kerry Tormey, aka Kerry Adine Mary
25 Tormey (Respondent). The Registered Nurse License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on January 31, 2013, unless renewed.

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4. Section 2750 of the Business and Professions Code (Code) provides in part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides in part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

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7. Section 2761 of the Code states in part:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

1 8. Section 2762 of the Code states:

2 "In addition to other acts constituting unprofessional conduct within the meaning of this
3 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
4 chapter to do any of the following:

5 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
6 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
7 administer to another, any controlled substance as defined in Division 10 (commencing with
8 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
9 defined in Section 4022.

10 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
11 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
12 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
13 himself or herself, any other person, or the public or to the extent that such use impairs his or her
14 ability to conduct with safety to the public the practice authorized by his or her license."

15 **REGULATORY PROVISIONS**

16 9. California Code of Regulations, title 16, section 1444, states:

17 "A conviction or act shall be considered to be substantially related to the qualifications,
18 functions or duties of a registered nurse if to a substantial degree it evidences the present or
19 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
20 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

21 "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
22 subdivision (d) of Penal Code Section 11160.

23 "(b) Failure to comply with any mandatory reporting requirements.

24 "(c) Theft, dishonesty, fraud, or deceit.

25 "(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
26 Penal Code."

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1 c. On or about March 4, 2010, in a proceeding entitled *The People of the State of*
2 *California v. Kerry Hicks*, Superior Court County of Ventura, case no 2009038285, Respondent
3 plead guilty to one misdemeanor violation of Penal Code 148(a)(1) [Resist, Obstruct or Delay of
4 Peace Officer]. Respondent was placed on formal probation and ordered to under go a MARRT
5 Review Hearings. The circumstances of the conviction are that on or about October 19, 2009,
6 Respondent was at the Ventura County Hall of Justice. A uniformed Sherriff's Deputy
7 recognized her from multiple prior contacts. The Deputy informed Respondent that she was
8 being detained so he could check if she still had an active warrant. Respondent tried to get away
9 from the officer and yelled unintelligible words. The Deputy was able to catch up to Respondent
10 and place her under arrest. Respondent began screaming loudly and tried to pull her arms out of
11 the Deputy's grasp.

12 d. On or about March 4, 2010, in a proceeding entitled *The People of the State of*
13 *California v. Kerry Hicks*, Superior Court County of Ventura, case no 2009031395, Respondent
14 plead guilty to one violation of Penal Code 496 (a) [Receiving Stolen Property]. Respondent was
15 sentenced on September 2, 2010, and was placed on 36 months probation, ordered to serve 30
16 days in jail and pay a fine. The circumstances of the conviction are that on or about August 27,
17 2009, Respondent was found withholding stolen property from her roommate. Respondent
18 admitted to having the stolen property, but would not return all of it. Respondent provided the
19 officers with a fake name and birth date.

20 e. On or about September 18, 2009, in a proceeding entitled *The People of the State of*
21 *California v. Kerry Hicks*, Superior Court County of Ventura, case no 2009025876, Respondent
22 was found guilty by the Court of one misdemeanor count of violating Penal Code 273.6 (a)
23 [Disobeying Domestic Relations Court Order]. Respondent was sentenced to 36 months
24 probation; twenty days in jail; 16 hours of Direct Work; attend 52 week domestic violence
25 counseling; attend a minimum of 10 sessions of parenting counseling / therapy and ordered to pay
26 fines and fees. On or about October 29, 2009, the court determined that Respondent was eligible
27 for the Multi-Agency Referral and Recovery Treatment Program (MAART). In the same case,
28 on or about March 4, 2010, Respondent violated probation on three different dates. The

1 circumstances of the conviction are that on or about July 12, 2009, Respondent violated a
2 restraining order, in which she is not to come within 100 yards of her ex-husband's residence, his
3 person or their three children. Respondent was seen in the backyard of a neighbor's house
4 adjacent to her ex-husband's home.

5 f. On or about February 23, 2009, in a proceeding entitled *The People of the State of*
6 *California v. Kerry Hicks*, Superior Court County of Ventura, case no 2008035594, Respondent
7 plead nolo contendere and was found guilty by the Court of violating Penal Code 273.6(a)
8 [Disobeying Domestic Relations Court Order]. Respondent was not sentenced until September
9 18, 2009, due to her repeated failure to appear in court at the scheduled time. A warrant for her
10 arrest was issued. Respondent was taken into custody on August 28, 2009, and held until the
11 court could reschedule the sentencing hearing. A protective order was issued, preventing
12 Respondent from having any contact with her ex-husband. The protective order expires on
13 September 18, 2012. Respondent was placed on three years of formal probation; ordered to serve
14 10 days in jail; ordered to attend weekly sessions of domestic violence counseling; shall not use
15 or possess any drugs; shall consent to any tests to determine the presence of controlled
16 substances; referred to the Alcohol and Drug Treatment Program; ordered to undergo a minimum
17 10 sessions of parenting counseling / therapy; Parenting time was stayed until September 18,
18 2010; and was ordered to pay fines and fees.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Use of drug/alcohol in Dangerous Manner)**

21 12. Respondent is subject to disciplinary action under Code section 2762 (a), on the
22 grounds of unprofessional conduct, in that Respondent has been ordered to undergo mandatory
23 drug and alcohol treatment as a condition of criminal probation.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct – Obtain Controlled Substance/Dangerous Drugs)**

26 13. Respondent is subject to disciplinary action under Code section 2762 (b), on the
27 grounds of unprofessional conduct, in that Respondent was found to be in possession of Xanax,
28 when she was arrested on or about August 2, 2010.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violation of the Nurse Practice Act)**


3 14. Respondent is subject to disciplinary action under Code section 2761 (d) in that
4 Respondent has violated the provisions or terms of the Nursing Practice Act or regulations
5 adopted pursuant to it. Complainant's allegations, as set forth in paragraphs 11 through 13,
6 inclusive, are incorporated by reference as though fully set forth.

7
8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Registered Nursing issue a decision:

- 11 1. Revoking or suspending Registered Nurse License Number 512633, issued to Kerry
12 Adine Hicks, aka Kerry Tormey, aka Kerry Adine Mary Tormey;
- 13 2. Ordering Kerry Adine Hicks to pay the Board of Registered Nursing the reasonable
14 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and
- 15 3. Taking such other and further action as deemed necessary and proper.
- 16
17

18 DATED: November 09, 2011

19 *for* 
20 LOUISE R. BAILEY, M.ED., RN
21 Executive Officer
22 Board of Registered Nursing
23 Department of Consumer Affairs
24 State of California
25 Complainant

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